

STATE OF NEW YORK

8185

IN SENATE

June 12, 2006

Introduced by Sens. MARCELLINO, DeFRANCISCO, FLANAGAN, LAVALLE, PADAVAN, RATH, TRUNZO, WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to use of ultra low sulfur fuel and best available technology in state owned heavy duty diesel vehicles or heavy duty diesel vehicles under contract with the state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Short title. This act shall be known as the "Diesel Emis-
2 sions Reduction Act 2006".
3 § 2. Legislative findings and declarations. The Legislature hereby
4 finds and declares that diesel exhaust particle pollution is a clear and
5 present health threat to New Yorkers. According to the United States
6 Environmental Protection Agency, diesel exhaust particles are a likely
7 lung cancer agent. In New York state, diesel exhaust is also the prime
8 contributor to airborne fine particle pollution which is linked to
9 premature death, asthma attacks, and cardiovascular disease. Diesel
10 exhaust is also a contributor to formation of ground level ozone; a
11 powerful respiratory irritant that is linked to premature death, asthma
12 attacks and can damage the lung tissue of children. Nearly 90% of New
13 Yorkers live in an area that fails to meet federal health standards for
14 ozone. The counties of Westchester, Orange, Rockland, Bronx, Kings,
15 Queens, New York, Richmond, Nassau and Suffolk are also listed as being
16 out of attainment for the fine particle federal health standard. New
17 York state consumes over 48 million gallons of diesel fuel each year and
18 owns or operates through contract thousands of diesel-powered vehicles.
19 Therefore, the purpose of this act is to address the public health
20 threat posed by combustion of diesel fuel.
21 § 3. The environmental conservation law is amended by adding a new
22 section 19-0323 to read as follows:
23 **§ 19-0323. Use of ultra low sulfur diesel fuel and best available tech-**
24 **nology by the state.**
25 **1. As used in this section, the terms:**

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets

[-] is old law to be omitted.

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- 1 a. "Ultra low sulfur diesel fuel" means diesel fuel having sulfur
2 content of 0.0015 per cent of sulfur or less.
3 b. "Heavy duty vehicle" or "vehicle" means any on and off-road vehicle
4 powered by diesel fuel and having a gross vehicle weight of greater than
5 8,500 pounds, except that those vehicles defined in section 101 of the
6 vehicle and traffic law, paragraph 2 of schedule E and paragraph (a) of
7 schedule F of subdivision 7 of section 401 of such law, and vehicles
8 specified in subdivision 13 of section 401 of such law, and farm type
9 tractors and all terrain type vehicles used exclusively for agricultural
10 or mowing purposes, or for snow plowing, other than for hire, farm
11 equipment, including self-propelled machines used exclusively in grow-
12 ing, harvesting or handling farm produce, and self-propelled caterpillar
13 or crawler-type equipment while being operated on the contract site, and
14 timber harvesting equipment such as harvesters, wood chippers, forward-
15 ers, log skidders, and other processing equipment used exclusively off
16 highway for timber harvesting and logging purposes, shall not be deemed
17 heavy duty vehicles for purposes of this section. This term shall not
18 include vehicles that are specially equipped for emergency response by
19 the department, office of emergency management, sheriff's office of the
20 department of finance, police department or fire department.
21 c. "Best available retrofit technology" means technology, verified by
22 the United States environmental protection agency for reducing the emis-
23 sion of pollutants that achieves reductions in particulate matter emis-
24 sions at the highest classification level for diesel emission control
25 strategies that is applicable to the particular engine and application.
26 Such technology shall also, at a reasonable cost, achieve the greatest
27 reduction in emissions of nitrogen oxides at such particulate matter
28 reduction level and shall in no event result in a net increase in the
29 emissions of either particulate matter or nitrogen oxides.
30 d. "Reasonable cost" means that such technology does not cost greater
31 than 30 percent more than other technology applicable to the particular
32 engine and application that falls within the same classification level
33 for diesel emission control strategies, as set forth in paragraph c of
34 this subdivision, when considering the cost of the strategies, them-
35 selves, and the cost of installation.
36 2. Any diesel powered heavy duty vehicle that is owned by, operated by
37 or on behalf of, or leased by a state agency and state and regional
38 public authority shall be powered by ultra low sulfur diesel fuel.
39 3. Any diesel powered heavy duty vehicle that is owned by, operated by
40 or on behalf of, or leased by a state agency and state and regional
41 public authority with more than half of its governing body appointed by
42 the governor shall utilize the best available retrofit technology for
43 reducing the emission of pollutants. The commissioner shall promulgate
44 regulations for the implementation of this subdivision specifying proce-
45 dures for compliance according to the following schedule:
46 a. Not less than 33% of the vehicles covered by this subdivision shall
47 have best available retrofit technology on or before December 31, 2008.
48 b. Not less than 66% of the vehicles covered by this subdivision shall
49 have best available retrofit technology on or before December 31, 2009.
50 c. All vehicles covered by this subdivision shall have best available

51 retrofit technology on or before December 31, 2010.
52 This subdivision shall not apply to any vehicle subject to a lease or
53 public works contract entered into or renewed prior to the effective
54 date of this section.
55 4. In addition to other provisions for regulations in this section,
56 the commissioner shall promulgate regulations as necessary and appropri-

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1 ate to carry out the provisions of this act including but not limited to
2 provision for waivers upon written finding by the commissioner that (a)
3 best available retrofit technology for reducing the emissions of pollu-
4 tants as required by subdivision 3 of this section is not available for
5 a particular vehicle or class of vehicles and (b) that ultra low sulfur
6 diesel fuel is not available.
7 5. This section shall not apply where federal law or funding precludes
8 the state from imposing the requirements of this section.
9 6. On or before January 1, 2008 and every year thereafter, the commis-
10 sioner shall report to the governor and legislature on the use of ultra
11 low sulfur diesel fuel and the use of the best available retrofit tech-
12 nology as required under this section. The information contained in this
13 report shall include, but not be limited to, for each state agency and
14 public authority covered by this section: (a) the total number of diesel
15 fuel-powered motor vehicles owned or operated by such agency and author-
16 ity; (b) the number of such motor vehicles that were powered by ultra
17 low sulfur diesel fuel; (c) the total number of diesel fuel-powered
18 motor vehicles owned or operated by such agency and authority having a
19 gross vehicle weight rating of more than 8,500 pounds; (d) the number of
20 such motor vehicles that utilized the best available retrofit technolo-
21 gy, including a breakdown by motor vehicle model, engine year and the
22 type of technology used for each vehicle; (e) the number of such motor
23 vehicles that are equipped with an engine certified to the applicable
24 2007 United States environmental protection agency standard for particu-
25 late matter as set forth in section 86.007-11 of title 40 of the code of
26 federal regulations or to any subsequent United States environmental
27 protection agency standard for particulate matter that is at least as
28 stringent; and (f) all waivers, findings, and renewals of such findings,
29 which, for each waiver, shall include, but not be limited to, the quan-
30 tity of diesel fuel needed to power diesel fuel-powered motor vehicles
31 owned or operated by such agency and authority; specific information
32 concerning the availability of ultra low sulfur diesel fuel.
33 7. The department shall, to the extent practicable, coordinate with
34 regions which have proposed or adopted heavy duty emission inspection
35 programs to promote regional consistency in such programs.
36 § 4. Severability. If any clause, sentence, paragraph, section or part
37 of this act shall be adjudged by any court of competent jurisdiction to
38 be invalid and after exhaustion of all further judicial review, the
39 judgment shall not affect, impair or invalidate the remainder thereof,
40 but shall be confined in its operation to the clause, sentence, para-
41 graph, section or part of this act directly involved in the controversy
42 in which the judgment shall have been rendered.
43 § 5. This act shall take effect on the one hundred eightieth day after
44 it shall have become a law.